

ORDINANCE NO. 1189

AN ORDINANCE ESTABLISHING PROCEDURES FOR BURYING UTILITIES UNDERGROUND WITHIN THE CITY OF MISSION HILLS, KANSAS, BY ADDING A NEW ARTICLE 12 TO CHAPTER V OF THE CITY OF MISSION HILLS, KANSAS CODE OF ORDINANCES, ENTITLED "BURIAL OF UTILITY IMPROVEMENTS"

WHEREAS, the City of Mission Hills, Kansas is heavily foliated with trees and other shrubbery; and

WHEREAS, the power and other utilities and utility lines that serve the City and the residents thereof are largely constructed and situated above grade; and

WHEREAS, the City's location in the Midwest makes the City generally prone to severe weather, including wind, rain, dust, hail, sleet, snow, ice, and other forms of weather; and

WHEREAS, during severe weather events and during the natural life cycle of trees and other shrubbery, the power and other utility lines that serve the City and the residents thereof are highly susceptible to damage from the weather and from falling foliage and other shedding debris; and

WHEREAS, this damage frequently results in power and other utility outages in portions or all of the City; and

WHEREAS, the above-grade power and other utility lines that serve the City and the residents thereof are deemed aesthetically unpleasing to some residents of the City; and

WHEREAS, the City believes that it is in the interest of the public health, safety and welfare of the residents of the City to provide a mechanism that will allow residents of the City to alleviate, in whole or in part, the power outages and aesthetic unattractiveness of above-grade utilities by providing for a mechanism through which property owners may work with the City and the owners of the utilities and utility lines to bury those utilities and lines; and

WHEREAS, the City believes that it is in a position to coordinate these projects with property owners and with the owners of the utilities and that, while it does not intend to contribute financially to these projects or to be liable in any respect for the burial of utility lines, the City will nevertheless serve a valuable role in facilitating these projects; and

WHEREAS, because private financing of burial of utility lines is fiscally advantageous to the City, where a utility improvement district, as defined below, is proposed and one or more owners of property within that district choose to abstain from contributing financially to the improvements, the City may nevertheless authorize those improvements on that person's property where those improvements will be funded by other members of the district.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MISSION HILLS, KANSAS, AS FOLLOWS:

SECTION 1. A new Article 12 of Chapter V of the City of Mission Hills, Kansas Code of Ordinances is hereby added to read as follows:

Article 12 – Burial of Utility Improvements

5-1201. Definitions. For the purpose of this Article, the terms defined in this section shall have the meanings ascribed to them as follows:

- A. “Charge” means a payment to the City to cover the Cost Allocation of Utility Improvements to a Petitioner within a Utility Improvement District.
- B. “City” means the City of Mission Hills.
- C. “City Administrator” means the City Administrator of the City.
- D. “Consultant” means engineers, architects, planners, attorneys and other persons deemed competent to advise and assist the governing body in planning and making Utility Improvements.
- E. “Cost” means all costs necessarily incurred for the preparation of preliminary reports, the preparation of plans and specifications, the preparation of resolutions, ordinances and other proceedings, necessary fees and expenses of Consultants together with the Cost of land, materials, payment to Utility Companies for work performed, payment to contractors, labor and other lawful expenses incurred in planning and making a Utility Improvement. Cost may also include a charge of not to exceed five percent (5%) of the total Cost of a Utility Improvement to reimburse the City for services rendered by the City in the administration and supervision of a Utility Improvement.
- F. “Cost Allocation” means the assignment of the proportionate share of the Cost to each Petitioner within a Utility Improvement District for the purpose of establishing the Charge.
- G. “Governing Body” means the Mayor and City Council of the City of Mission Hills.
- H. “Improve” or “Improvement” means to excavate, bury, construct, conceal, reconstruct, remove, replace, renew, repair, install, equip, extend or otherwise perform any work to existing above-grade Utilities for the purpose and in furtherance of burying the above-grade Utilities to: (1) enhance the reliability of utility service by limiting the Utility’s exposure to wind, storms, deteriorating trees and foliage and other natural elements; and/or (2) to enhance aesthetics by making these above grade Utilities less visible.
- I. “Newspaper” means the official designated newspaper of the City.
- J. “Owner” means the owner of an identifiable parcel of real property within an existing or proposed Utility Improvement District.
- K. “Petitioner” means an Owner or Owners that have signed a petition for the creation of a Utility Improvement District.
- L. “Utility” or “Utilities” means existing above-grade utility infrastructure used for public or private purposes including all or any telephone wires, electrical transmission and distribution lines, overhead power lines, cable television lines, fiber optic lines, high speed data lines, transformers, junction boxes, switching boxes, switching stations, support structures, footings, foundations and other appurtenances necessary to the functional operation of these utilities.

- M. "Utility Company" means an entity, whether publicly or privately operated, that owns and operates a Utility or Utilities in the City, and if more than one Utility Company exists in an area proposed for Improvement then the singular use of Utility Company may also mean the plural Utility Companies.
- N. "Utility Improvement" means to Improve a Utility under authority of this Article.
- O. "Utility Improvement District" means an area established by resolution by the Governing Body in accordance with Section 5-1205 in which Utility Improvements will take place.

5-1202. Utility Improvements Authorized; Charges. The Governing Body is authorized to make, cause to be made, or coordinate Utility Improvements that confer a special benefit upon property within a definable area of the City and may levy and collect Charges from Owners within a Utility Improvement District to cover payment of the Cost of the Utility Improvement from Charges as hereinafter provided.

5-1203. Acquisition of Property Rights. On behalf of the Owners within a Utility Improvement District, and subject to other applicable laws, the City may acquire property or interests in property when necessary for any of the purposes authorized by this Article.

5-1204. Combining Utility Improvements. In the discretion of the Governing Body, any two or more Utility Improvements may be combined together and considered as one project under this Article.

5-1205. Initiation of Utility Improvement; Filing of Petition; Staff Report; Resolution Determining Advisability and Authorization of Utility Improvements.

- A. Any one or more Owners who or which, whether one or more, are willing to pay the Cost of a proposed Utility Improvement, may file an application requesting the establishment of a Utility Improvement District for proposed Utility Improvements. This application must be filed with the City Clerk and the application must set forth:
 - 1. The general nature of the proposed Utility Improvement, including a map or other description of the location of Utilities proposed to be Improved within the Utility Improvement District;
 - 2. the names and addresses of known Owners wishing to participate in establishment of the Utility Improvement District;
- B. After filing the application, the Owners and the City Administrator will establish a proposed Utility Improvement District, and the City will contact other Owners within the proposed Utility Improvement District for discussion of inclusion as Petitioners. The City and the Owners will coordinate with other Owners to arrive at a Utility Improvement District and a list of Petitioners, who or which, whether one or more, are willing to pay the Cost of a proposed Utility Improvement, at which point a petition will be prepared jointly between the City and the Petitioners on a form provided by the City containing acknowledgements by the Petitioners relating to compliance with this duties imposed by this Article. Each petition must be signed by the Petitioners, be filed with the City Clerk and be accompanied by an administrative fee in the amount of One Thousand and 00/100 Dollars (\$1,000.00) to cover preliminary staff time, including legal counsel, Costs from the Utility Company in the preparation of Cost estimates and feasibility studies and for processing that petition and coordination with consultants and the

Utility Companies, in accordance with this Article. At the discretion of the City Administrator, based on the costs the City has incurred in processing the petition, Costs from the Utilities and associated coordination, unused portions of the administrative fee may be refunded to the Petitioners on a pro rata basis.. The petition must additionally set forth:

1. The general nature of the proposed Utility Improvement, including a map of the location of Utilities proposed to be Improved within the Utility Improvement District;
 2. the estimated or probable Cost of the Utility Improvements, if feasible to obtain;
 3. a legal description and County parcel identification number of each property proposed to be included in the Utility Improvement District;
 4. The names and addresses of all Owners within the proposed Utility Improvement District and the County parcel identification number or numbers of the properties each Owner owns or has an ownership interest in within the Utility Improvement District;
 5. the proposed method of Cost Allocation within the Utility Improvement District pursuant to Section 5-1207 for purposes of establishing Charges;
 6. a statement that the Petitioners, in the aggregate, are the Owners of one hundred percent (100%) of the property or properties proposed to be included in the Utility Improvement District and that those Petitioners are willing to pay one hundred percent (100%) of the Cost of the Utility Improvements including, if necessary, supplemental Charges as approved by the Governing Body in accordance with Section 5-1208; and if the Petitioners are not the Owners of one hundred percent (100%) of the property or properties to be included in the Utility Improvement District, a statement that the Petitioners will pay one hundred percent (100%) of the Cost of Utility Improvements allocated to the Utility Improvement District including Costs associated with Improvements on the property of other Owners within the Utility Improvement District and, if necessary, supplemental Charges as approved by the Governing Body in accordance with Section 5-1208;
- C. After completion of the petition by Petitioners and the City to create a Utility Improvement District, the City Administrator will prepare a staff report to the Governing Body.
- D. While preparing the staff report, the City Administrator may secure an independent feasibility report to assist in the determination of whether a Utility Improvement can be made as proposed or otherwise, or in combination with other Utility Improvements authorized by this Article. The staff report may be prepared by the City Administrator, by other qualified officers of the City, by consultants or in cooperation with the Utility Company. The staff report should address, but not be limited to:
1. confirmation of the Utility Company's consent to the Improvement; and
 2. verification that the Utility Improvement District is adequately defined and that the proposed location of Utility Improvements is adequately defined; and
 3. results of a preliminary technical analysis, including a brief analysis of any effect the Utility Improvements will have on Utilities outside of the Utility Improvement District; and

4. results of a preliminary analysis of the feasibility of construction of the Utility Improvements, including whether any property outside of the Utility Improvement District or in the City's right-of-way will need to be utilized, crossed, or accessed in conjunction with the Utility Improvements; and
 5. the City Administrator's preliminary Cost estimate for the Utility Improvements, which estimate will be coordinated and verified with the Petitioners and the Utility Company; and
 6. the City Administrator's estimated schedule for construction and completion of the Utility Improvements, which estimate will be coordinated and verified with Petitioners and the Utility Company; and
 7. the Utility Company's willingness to enter in to a Memorandum of Understanding regarding the Cost estimate, the construction parameters and the schedule of the Utility Improvements;
 8. the City Administrator's recommendation as to whether the method of Cost Allocation proposed in the petition is fair and equitable to all Petitioners, bearing in mind that some Petitioners may be willing to pay for the Cost of Utility Improvements on property they do not own; and
 9. the Charge to each Petitioner; and
 10. if an Owner within the Utility Improvement District has not signed the petition, a statement of whether the Owner is nevertheless agreeable to the Utility Improvements, but wishes not to contribute financially, and a proposed Cost Allocation of the Charges assignable to the property of the Owner that has not signed the petition between the Petitioners.
- E. Upon completion of the staff report, the City Administrator will forward a copy of the staff report to each member of the Governing Body and will also send a copy of the staff report to all Owners within the Utility Improvement District by U.S. Mail, postage prepaid, and advise those Owners of the date the staff report will be presented to the Governing Body for consideration.
- F. Upon receipt of the City Administrator's staff report, the Governing Body shall consider the advisability of creation of the Utility Improvement District at a regular or special meeting of the Governing Body. The Governing Body shall consider the City Administrator's staff report, the comments of Owners within the Utility Improvement District and any other information the Governing Body believes should be considered in accordance with this Article.
- G. In approving any Utility Improvement District for a Utility Improvement under this Article, the Governing Body shall make findings by resolution that:
1. the boundaries of the Utility Improvement District are properly defined by metes and bounds description or by other description that adequately identifies the property to be included in the Utility Improvement District; and
 2. the location of the Utility Improvements is adequately identified; and

3. the Utility Company has consented to the Utility Improvements; and
4. the Utility Improvement is in the interest of the City and the Utility Improvement District; and
5. the Owners within the Utility Improvement District are satisfied with the proposed Utility Improvements as described in the City Administrator's staff report, including the City Administrator's estimated Cost, as outlined in the City Administrator's staff report; and
6. a Cost Allocation method between Petitioners for the purpose of establishing Charges has been established pursuant to Section 5-1207, the method is stated in the resolution, and is equitable; and
7. all Charges commensurate with the Cost Allocations must be paid to the City by the Petitioners within the Utility Improvement District and placed in a separately identifiable account for payment of Costs by the City prior to:
 - (a) Letting of surveys, or completion of formal plans for construction, to the extent that such plans or surveys are required; or
 - (b) execution of a contract for Utility Improvements with the Utility Company or any contractor thereof, or any other authorization of work to be performed in furtherance of the Utility Improvements by the City Administrator; and
8. the Charges are expected to cover the estimated Costs for the Utility Improvements;
9. the Utility Company and the City have entered into a Memorandum of Understanding regarding the Cost estimate and performance of construction of the Utility Improvements, which performance parameters will include a schedule of construction, the names of contractors or subcontractors proposed to be employed by the Utility Company, and an understanding that all Costs payable to the Utility Company or its contractors will be payable directly by the City from Charges collected;

H Based upon the information relied upon during consideration of the Utility Improvement District, the Governing Body may elect to make the Utility Improvement District smaller than the area proposed in the petition if one or more Petitioners has properly withdrawn his or her name from the petition. The Utility Improvement District may not be enlarged.

I A copy of the Governing Body's signed resolution must be mailed by U.S. Mail, U.S. postage prepaid, to all Owners in the Utility Improvement District. The failure of any Owner to receive a copy of the resolution shall not invalidate the proceedings or act to toll the period for payment of Charges specified in Section 5-1206.B.

5-1206. Failure of Petitioner to Pay Charge.

- A. Should a Petitioner fail to pay the Charge in accordance with the Cost Allocation approved by the Governing Body's resolution pursuant to Section 5-1205.G., the remaining Petitioners may:
 1. cover the shortfall of the Cost of the Utility Improvements; or

2. amend the petition to exclude the property of the Petitioner failing to pay the Charge from the Utility Improvement District, with the remaining Petitioners covering the City's Costs to modify the City Administrator's staff report to account for the amendment to the petition in accordance with an adjusted Cost Allocation; or
 3. waive performance of the Utility Improvements, and (in this instance) all fees incurred by the City at the time of waiver in excess of the One Thousand Dollar (\$1,000.00) petition processing fee shall be paid by the Petitioners proportionately after being billed or having received a statement of the same by the City. If the cost to the City with respect to processing the petition and coordination with the Utility Companies, is less than the One Thousand Dollar administrative fee paid pursuant to Section 12-505(b), the City Administrator may, in his or her sole discretion, refund the un-incurred portion of the administrative fee to the Petitioners, pro rata
 - (a) Where Charges to cover Costs have not been paid by an individual Owner at the time of waiver of performance of the Utility Improvements and if that Owner fails to pay the Owner's proportionate share of the Costs incurred by the City, within sixty (60) days of delivery of a bill therefore, those Costs will become a lien on the Owner's real property and the Costs will be certified by the City Clerk to the County Clerk and shall be collected by the County Treasurer and paid to the City as other taxes are collected and paid, with interest.
 - (b) Where Charges to cover Costs have been paid by an individual Owner at the time of waiver of performance of the Utility Improvements, the proportionate share of Costs to the Owner will be deducted from the Charge and a refund of the balance of the Charge will be distributed to the Owner by the City within a reasonable period of time.
- B. If after fifty-five (55) days of the passage of the resolution pursuant to Section 5-1205.G. all Charges are not paid to cover the Costs of the Utility Improvement within the Utility Improvement District, in the Governing Body's sole discretion the Governing Body may deem the request for performance of the Utility Improvements waived by all of the Petitioners and all fees incurred by the City at the time of the waiver in excess of the One Thousand Dollar (\$1,000.00) petition processing fee shall be paid by the Owners in accordance with subdivision A. 3. of this Section.

5-1207. Formulae and Methods of Cost Allocation.

- A. The Cost Allocation of any Utility Improvement against the Petitioners in the Utility Improvement District as determined in Section 5-1205.G. shall be apportioned against the Petitioners in accordance with the special benefits accruing to each of them and their real property by reasons of such Improvement or in accordance with the provisions of any petition submitted pursuant to Section 5-1205.B. The Cost may be Allocated equally per lineal foot of Utility to be buried on parcels owned by Petitioners or per square foot against individual parcels owned by Petitioners within the Utility Improvement District, or the Cost Allocation may be determined and fixed on the basis of any other reasonable method which will result in imposing substantially equal burdens or shares of the Cost upon Petitioners and their real property within the Utility Improvement District similarly benefited.
- B. This section shall not be construed to limit the creation or use of a Cost Allocation method for any Utility Improvement that recognizes varying benefit levels to Petitioners and their real

property within the Utility Improvement District and allocates Costs in relation thereto, and it shall not be construed to limit Petitioners from paying the Costs attributable to:

1. Owners within the Utility Improvement District that elect not to sign the petition; or
2. Petitioners who are unwilling to pay Charges after adoption of a resolution authorizing Utility Improvements by the Governing Body.

5-1208. Supplemental Charges; Collection.

- A. The Governing Body may provide for a supplemental Charge to an individual Petitioner or the Petitioners collectively. The supplemental Charge may be made to cover all or any part of the Cost of any work performed by the City or billed to the City by the Utility Company or by contractors not covered by the Charges collected pursuant to Section 5-1205.G, and that the Governing Body deems necessary:
 1. to correct omissions, errors, or mistakes in the Cost estimate; or
 2. to cover unforeseen Costs not included in the City Administrator's Cost estimate; or
 3. as a result of the failure of any Owner to perform any work that has been made that Owner's duty to perform in accordance with the petition filed pursuant to 5-1205.A., or by law or ordinance.
- B. When the Governing Body deems a supplemental Charge necessary, the amount thereof must be made by resolution after a notice and statement of the additional Costs incurred by the City has been provided to the Petitioners and the Petitioners have been given an opportunity to respond to the Governing Body in an open public meeting. The Governing Body may levy the supplemental Charge:
 1. proportionally among all Petitioners;
 2. by using the Cost Allocation method approved by resolution pursuant to Sections 5-1205.G and 5-1207; or
 3. by any other method that is equitable.

Supplemental Charges are payable in one (1) installment within sixty (60) days after the adoption of a resolution establishing the same, during which time the supplemental Charge may be paid by the Petitioner to the City without interest. All supplemental Charges shall be credited as a reimbursable item to the fund or funds of the City from which the additional Costs were paid.

- C. All supplemental Charges that remain unpaid after sixty (60) days following the adoption of a resolution establishing the supplemental Charges will become a lien on the Owner's real property and the Charges will be certified by the City Clerk to the County Clerk and shall be collected by the County Treasurer and paid to the City as other taxes are collected and paid, with interest.

5-1209. Enlargement of Utility Improvements. Upon receipt of a petition in accordance with Section 5-1205.B., and at the recommendation of the City Administrator or in its discretion, if the Governing Body

believes that expansion of the Utility Improvements beyond the Utility Improvement District on to public property is advantageous to the City, the City may pay the costs of those expanded Utility Improvements and coordinate construction of the expanded Utility Improvements with the Utility Company concurrently with the Utility Improvements in the Utility Improvement District. In this case, the City will not become a part of the Utility Improvement District and the Governing Body's decision to expand the Utility Improvements will not be grounds for a revision of the Cost Allocation authorized by adoption of the resolution approving the Utility Improvement District.

5-1210. Separate Utility Improvement Funds; Uses; Balances. The monies received for Charges from each Utility Improvement District shall be kept separately identifiable by the City. The City Treasurer shall keep an accounting of the Costs associated with the Utility Improvements, and the funds shall be used solely to pay the Costs incurred in the making of the Utility Improvement. If the final Cost of the completed Utility Improvement is less than the amount of the Cost determined under this Article and paid by the Petitioners as Charges, the Governing Body shall refund the balance to the Petitioners pro rata in accordance with the Cost Allocation established by resolution under Section 5-1205.G.

5-1211. Limitation on Actions. No suit to set aside the establishment of a Utility Improvement District, to make Utility Improvements, to recoup Charges or otherwise question the validity of the proceedings under this Article shall be brought after the expiration of thirty (30) days from the adoption of any resolution by the Governing Body pursuant to this Article.

Section 3. Codification. Section 1 of this Ordinance shall be codified in the City of Mission Hills, Kansas Code of Ordinances.

Section 4. Effective Date. This Ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 7th day of November, 2006.

APPROVED by the Mayor this 7th day of November, 2006.

/s/ David J. Fromm

David J. Fromm, Mayor

Attest:

/s/ Jill Clifton

Jill Clifton, City Clerk

Approved as to Form:

/s/ Stephen P. Chinn

Stephen P. Chinn, City Attorney